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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN
Tax Case (Appeal) Nos.96 to 98 of 2004

Commissioner of Income-tax
(Special Range I)
Coimbatore. .. Appellant in all the cases

versus

M/s.Palani Andavar Cotton &
Synthetic Spinners Limited
Udumalpet. .. Respondent in all the cases

Tax Case Appeal Nos.86 to 98 of 2004 are filed under Section 260-A of the Income-tax Act, 1961 against the orders of the Income-tax Appellate Tribunal, 'B' Bench, Chennai made in I.T.A.Nos.2759, 2767 and 2768(Mds)/1993 for the assessment years 1988-89, 1989-90 and 1990-91 respectively against the order of the Commissioner of Income Tax (Appeals) Coimbatore dated 24.8.93 and made in I.T.A.Nos.514-C to 516-C/93-94 against the order of the Deputy Commissioner of Income Tax, Special Range I, Coimbatore (i) dated 12.3.1997 and made in PAN/GIR No. CQ-9013/SR-I/CBE and (ii) dated 29.3.1996 and made in PAN/GIR No.OX-2306.

For Appellant : Mr.Muralikumaran,
Sr.Standing Counsel for Income-tax

For Respondent : Mr.R.Venkatanarayanan for
M/s.Subbaraya Ayer

JUDGMENT

(Judgment of the Court was made by CHITRA VENKATARAMAN,J.)

These appeals are preferred by the Revenue in respect of assessment years 1988-89, 1989-90 and 1990-91 against the orders of the Tribunal allowing the appeals of the assessee on the ground that the orders passed under Section 143(1)(a) could not be the subject matter of rectification under Section 154, as the question raised is a debatable one.

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2. The assessee filed returns of income disclosing a loss and a book profit under Section 115J of the Income Tax Act, 1961. The returns were considered and processed under Section 143(1)(a). On going through the records, the Deputy Commissioner found that the profit available for adjustment had been taken into account after reducing 30% of book profit by wrongly applying Section 115J(2). Treating this as a mistake apparent on record, proceedings were initiated under Section 154 of the Income-tax Act, 1961. Aggrieved by the orders of rectification, the assessee preferred appeals before the Commissioner of Income-tax (Appeals) contending that while computing the income for the purposes of Section 115J, a portion of the depreciation had not been allowed in the Assessment Years 1988-89 to 1990-91; that the said depreciation should be allowed to be carried forward to successive assessment years. The Commissioner of Income Tax (Appeals), however, dismissed the assessee's appeals on the ground that the assessable loss had been determined in accordance with the provisions of the Income Tax Act, 1961. However, 30% of the book profit was taken as deemed total income, as it was higher than the assessable income or loss under the provisions of the Act. The Commissioner of Income Tax (Appeals) also took the view that it could not be assumed that the depreciation was not allowed to the extent of computation of the book profit. The assessee preferred a Second Appeal before the Income Tax Appellate Tribunal contending that while computing the profit for the purposes of Section 115J, the depreciation claimed was not allowed, which resulted in an assessment on a higher deemed income. The assessee submitted that the extent of depreciation claimed not allowed for the purpose of Section 115J must be allowed to be carried forward in the subsequent year. The assessee also contended that the issue sought to be touched under Section 143(1)(a) by taking recourse to proceedings under Section 154 was an arguable issue; as such, the orders of the Assessing Officer as well as the Commissioner of Income Tax (Appeals) were totally erroneous.

3. By order dated 28th October 2002, the Tribunal passed a common order in respect of the Assessment Years 1988 89 to 1990-91 and allowed the appeals of the assessee, taking the view that the orders passed on rectification were totally unsustainable. The Tribunal took the view that at the time the intimation under Section 143(1)(a) and the order under Section 154 was passed, the issue was a debatable one; as such, the Tribunal held that what could not have been a possibility under Section 143(1)(a) could not be done by invoking Section 154. The Tribunal further pointed out that this Court rendered a decision on 19th November 2001 in the case of CIT Vs. FAB EXPORTS PVT. LTD. reported in 258 ITR 56 on the question that even where tax is levied on book profits, the loss and depreciation in the computation of statutory profits for the year would not be available for carry forward and set off to the extent to which it is absorbed against statutory income of the

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year. The Tribunal held that the decision of this Court came much later to the date when the orders under Section 143(1)(a) and Section 154 were passed; as such, the proceedings taken were totally unsustainable. The Tribunal referred to the decision of the Apex Court reported in [1971] 82 ITR 50 (T.S.BALARAM, ITO Vs. VOLKART BROTHERS), that a debatable issue could not be made a subject matter for taking recourse to Section 154.

4. Aggrieved by the said order, the Revenue is on appeal before this Court contending that since the issue is now settled in favour of the Revenue by the decision of this Court reported in 258 ITR 56 (CIT Vs. FAB EXPORTS (P) LTD.) as well as by the decision of the Supreme Court reported in 258 ITR 770 (KARNATAKA SMALL SCALE INDUSTRIES DEVELOPMENT CORP0RATION LTD. Vs. CIT), the law declared by the Apex Court is presumed to have always been the law of the land. Consequently, the rectification proceedings taken were maintainable. The Revenue contended that the application of wrong provision or an erroneous application of the provisions of the Act will amount to a mistake apparent from the record amenable for correction or rectification under Section 154. Consequently, the Revenue submitted that the view of the Tribunal merits to be reversed.

5. A perusal of the order of the Tribunal shows that the return was originally processed under Section 143(1)(a) on 18.9.1991. Subsequently, on 31.5.1993, the order of intimation was rectified taking the view that there were no provisions under Section 115J(2) to reduce the 30% book profit from the available profit for setting off and carried forward losses. Against this order dated 31.5.1993, the assessee preferred appeals before the Commissioner of Income Tax (Appeals).

6. Learned counsel for the respondent placed reliance on the decision of this Court in the case of COMMISSIONER OF INCOME-TAX VS. NONMAG WIRES P. LTD. reported in (2007) 292 ITR 557 (Mad) as well as the order dated 31.1.2007 in T.C.No.144 of 2003, wherein, under similar circumstances, this Court held that in a case of adjustment under Section 143(1)(a), a debatable question of law cannot be a subject matter of rectification under Section 154. This Court further held that the claim, which has to be considered on a debatable question, must necessarily be dealt with by the Officer under regular assessment proceedings relevant under the Act. In those circumstances, learned counsel for the assessee submits that the order of the Tribunal has to be upheld on the limited question as to the availability of jurisdiction under Section 154.

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7. A perusal of the order of the Tribunal shows that the Tribunal held that as on the date of the proceedings taken under Section 143(1)(a) as well as under Section 154, admittedly, there was a dispute with reference to Section 115J book profit working and the carry forward of loss and the depreciation. The law on the said question was settled by this Court on 19th November 2001 and again by the Supreme Court on 3rd December 2002. While there is no dispute as to the proposition of law that the law declared dates back to the inception of the provisions, yet, with the uncertainty existing as on the date when the proceedings under Section 143(1)(a) was subjected to Section 154, the jurisdiction under Section 154 is not available to correct the illegality in an assessment. The exposition of law by the Supreme Court does not make an error as one apparent from the record for the authority to assume jurisdiction under Section 154. An apparent error must be one which is glaring, obvious or self-evident mistake. The debatable issue cannot be a ground for invoking jurisdiction under Section 154. It is not denied that there are provisions under the Act which permit the Revenue to take up and keep alive assessments even on debatable issues which are awaiting decisions before Court of law. An issue, which required a long process of reasoning and where there are already conflicting views, cannot offer a platform for a resort to Section 154 proceedings. In similar circumstances, in a decision reported in 292 ITR 557 (COMMISSIONER OF INCOME-TAX VS. NONMAG WIRES P.LTD.) to which one of us is a party (CHITRA VENKATARAMAN,J.), this Court held that a debatable issue on a point of law is not a mistake apparent from the record. Placing reliance on the decision of the Apex Court reported in [1971] 82 ITR 50 (T.S.BALARAM, ITO Vs. VOLKART BROTHERS), this Court held that "a mistake apparent on the record within the meaning of Section 154 of the Act must be "obvious" and "patent" and not something which could be established by a long drawn process of reasoning of issues on points on which there may be more than one reason. A decision on a debatable point of law certainly is not a mistake apparent from the record. "

8. An impression formed on the scope of the provisions could not be a mistake or an error apparent from the record so as to justify the exercise of jurisdiction under Section 154. The invoking of the provisions of Section 154 presupposes a mistake or an error which is patent or obvious and does not involve a long drawn process of reasoning on a point which is already a debatable issue. Considering the fact that the decision of this Court was available much later to the proceedings under Section 143(1)(a), we do not find any error in the order of the Tribunal to set aside the rectification proceedings.

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In the circumstances, we confirm the order of the Tribunal and thereby dismiss the Tax Cases. There will be no order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Asst.Registrar
   Income-tax Appellate Tribunal
   Chennai.

2. The Commissioner of
   Income-tax (Appeals)
   Coimbatore.

3. The Deputy Commissioner of Income Tax
   Special Range I, Coimbatore.

4. The Commissioner of Income Tax
Special Range I, Coimbatore

1 cc to Mr.N. Muralikumaran, Senior Standing counsel for Income Tax, sr. 53429

Tax Case (Appeal) Nos.

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